

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2138 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANIL BHATNAGAR

Versus

ROHITKUMAR KRISHNALAL MEHTA

Appearance:

UNSERVED for Petitioners

MR DF AMIN for Respondent No. 1

Mr K M Mehta, APP for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/04/97

ORAL JUDGEMENT

None appears for the petitioner. I have gone through the petition. Petitioner No.1 is Collector of Customs, Kandla Free Trade Zone and petitioner No.2 is Assistant Collector of Custom, Kandla Free Trade Zone. They have filed this petition seeking direction to quash

the order of Chief Judicial Magistrate in Criminal Case No.1855 of 1985 dated 23.7.1985 whereby the learned Magistrate issued process against the petitioners for offence under section 500 read with 114 and 34 of I.P.C.

2. The complainant Rohitkumar K Mehta filed complaint alleging that in the show cause notice issued by the accused petitioners under the provisions of Customs Act, 1962 anywhere it was stated that the complainant was a representative of Associated Apparel. It is further stated by the complainant that he was representative of Rameshkumar Pandya of M/s. Associated Apparel. It is further stated by the complainant that he was representative of M/s. K R Maru and that fact was brought to the notice of the accused petitioners in the reply to the show cause notice. In spite of that he was wrongly described as representative of M/s. Associated Apparels and by publishing the said order in newspaper, he defamed his reputation. There is no dispute that the accused persons have acted in discharge of their official duties. In view of this there cannot be any prosecution in absence of previous sanction as required by section 137 of the customs Act. The learned Chief Judicial Magistrate committed error in issuing process without considering the provisions of section 137 of the Customs Act.

In view of the aforesaid, this Misc. Criminal Application is allowed and the order of the Chief Judicial Magistrate dated 23.7.1985 issuing process is quashed and set aside.

Rule made absolute accordingly.

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